

accordance with paragraph (b) of this section, or may propose how the contractor could eliminate the conflict.

(ii) If after submitting an offer, but prior to award, a contractor discovers that it has a conflict, it shall notify the FDIC in writing within 10 days or prior to award, whichever is earlier. The contractor, with its notice, may make such requests or proposals regarding the conflict or potential conflict as are described in paragraph (c)(1)(i) of this section.

(2) *Review by the FDIC.* (i) Subject to the restrictions set forth in paragraphs (c)(2)(ii) and (c)(3) of this section, the appropriate FDIC official, at his or her sole discretion, may determine whether a conflict of interest exists, may waive the conflict of interest in accordance with paragraph (b) of this section, or may approve in writing a contractor's proposal to eliminate a conflict of interest.

(ii) For contractors other than law firms and sole practitioner lawyers, the FDIC may consider a contractor's conflict or potential conflict of interest only if the FDIC first determines that the contractor's offer is the most advantageous of all received.

(3) *Pre-bid requests and pre-bid review for contractors other than law firms and sole practitioner lawyers.* A request for pre-bid review must be in writing and describe in detail the conflict or potential conflict of interest. The request may provide a proposal for elimination of the conflict or request a waiver of the conflict. The FDIC may perform a pre-bid review of conflicts of interest only if it first determines, at its sole discretion, that the participation of the contractor in the bidding process is necessary to provide adequate competition.

(d) *Conflicts of interest that arise or are discovered after contract award.* A contractor shall notify the FDIC in writing within 10 days after discovering that it has a conflict of interest. Such notification shall contain a detailed description of the conflict of interest and state how the contractor intends to eliminate the conflict. The FDIC, after receipt of such notification or other discovery of the contractor's conflict or potential conflict of interest, shall take such action as it determines

is in the FDIC's best interests, including that:

(1) The FDIC may notify the contractor in writing of its finding as to whether a conflict of interest exists and the basis for such determination; whether or not a waiver will be granted; or whether corrective actions may be taken in order to eliminate the conflict of interest. Corrective actions must be completed by the contractor not later than 30 days after notification is mailed by the FDIC unless the FDIC, at its sole discretion, determines that it is in the best interests of the FDIC to grant the contractor an extension in which to complete such corrective action;

(2) The FDIC may immediately declare any affected contracts with such contractor in default, terminate the contracts, and order an immediate transfer of duties and responsibilities under such contracts; or

(3) The FDIC may declare any affected contract with such contractor in default and temporarily waive such default in order to allow an orderly transfer of duties and responsibilities under such contract.

(e) *Reconsideration of decisions.* Decisions issued pursuant to this part may be reconsidered by the Chairman or the Chairman's designee upon application by the contractor. Such requests shall be in writing and shall contain the bases for the request. The FDIC, at its discretion and after determining that it is in its best interests, may stay any corrective or other actions ordered by the FDIC pending reconsideration of a decision.

§ 366.6 Information required to be submitted.

(a) *Initial submission.* Every offer submitted to the FDIC by any contractor shall include a completed Representations and Certifications Form and such other information as the FDIC may deem appropriate to permit it to make a determination with respect to disqualifying conditions or conflicts of interest. The Representations and Certifications Form shall require that the contractor provide the following:

(1) Certifications that, to the best of the contractor's knowledge, the contractor is not disqualified from service

on behalf of the FDIC because of the existence of any of the conditions identified in § 366.4(a), or conflicts of interest as defined in § 366.2(c)(1) through (3), subject to the contractor's request for waiver of a conflict of interest or proposal for elimination of a conflict of interest as described in § 366.5;

(2) A list and description of any instance during the ten (10) years preceding the submission of the offer in which the contractor or any company under the contractor's control defaulted on a material obligation to any insured depository institution;

(3) The contractor's agreement that it will not allow any employee, agent, or subcontractor to perform services under the proposed contract with the FDIC unless the contractor first verifies with each such employee, agent, or subcontractor that, to the best of such person's knowledge, such person:

(i) Is not disqualified from performing services under the FDIC contract because of the existence of any of the conditions identified in § 366.4(a);

(ii) Has no conflicts of interest as defined in § 366.2(c)(1) through (3), subject to a request by the contractor for a conflict of interest waiver or proposal for the elimination of a conflict of interest as set forth in § 366.5; and

(iii) Has not, during the ten (10) years preceding the submission of the offer, defaulted on a material obligation to any insured depository institution; and

(4) Any other information which the FDIC may deem appropriate, the scope of which will be dependent on the particular contract under consideration.

(b) *Subsequent submissions.* During the term of the contract, the contractor shall:

(1) Verify the information described in paragraph (a)(3) of this section for any employee, agent, or subcontractor who will perform services under the contract for whom such information has not been previously verified, prior to such employee, agent, or subcontractor performing services under the contract; and

(2) Immediately notify the FDIC if any of the information submitted pursuant to paragraph (a) of this section was incorrect at time of submission or has subsequently become incorrect.

(c) *Failure to provide information.* A contractor that fails to provide any required information or misstates a material fact may be determined by the FDIC to be ineligible for the award of the FDIC contract for which such information is required or to be in default with respect to any existing contract for which such information is required.

(d) *Retention of information.* A contractor shall retain the information upon which it relied in preparing its certification(s) during the term of the contract and for a period of three (3) years following the termination or expiration of the contract and shall make such information available for review by the FDIC upon request.

(e) *Delayed compliance in emergencies.* In emergencies, when unforeseeable circumstances make it necessary to contract immediately in order to protect FDIC personnel or property, the FDIC may authorize delayed compliance with this part.

(f) *Additional contractual requirements.* In addition to the provisions of this part, the FDIC may include in its contract provisions, conditions and limitations, including additional standards for contractor fitness and integrity.

§ 366.7 Minimum ethical standards for independent contractors.

(a) In connection with the performance of any contract and during the term of such contract, a contractor, shall not:

(1) Accept or solicit for itself or others favors, gifts, or other items of monetary value from any person the contractor knows is seeking official action from the FDIC in connection with the contract or has interests which may be substantially affected by the contractor's performance or nonperformance of duties to the FDIC;

(2) Use improperly or allow the improper use of FDIC property, or property over which the contractor has supervision or charge by reason of the contract;

(3) Use its status as an FDIC contractor for its personal, financial or business benefit or for the benefit of a third party, except as contemplated by the contract;